No. 81-45

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ALEXANDER L. STEVAS,
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

In re GERALDINE G. CANNON,

Petitioner.

REPLY TO THE JOINT RESPONSE IN OPPOSITION
TO PETITIONER'S MOTION TO EXPEDITE CONSIDERATION
OF THE PETITION FOR A WRIT OF MANDAMUS

1. Petitioner brought suit to redress denial of admission to the 1975 classes of the respondent schools. The schools' Joint Response now asserts that petitioner "will suffer at most only a single year's delay" if her Motion to Expedite Consideration is denied. (p.4). In October, 1979, they persuaded the district court to deny a preliminary injunction -- in "most important" part because the harm to petitioner in missing the 1979-80 school year would not "outweig[h] the disruption which would be caused to [the schools]." (Jt.Resp. Ex.A. pp.5-7,9, Finding 18, Conclusions 6-10,17). At that time, the Department of Health, Education and Welfare had just required all federally-assisted medical schools to "disrupt" their age policies. See, 44 Fed.Reg. 33773 (June 12, 1979) implementing the Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq. In fact, both schools promptly abolished their age policies for all future classes. Repeated denial of timely relief for procedural reasons, because "only" one additional year is

involved, clearly would undermine this Court's 1979 holding that "petitioner may maintain her lawsuit" for the 1975 class. 441 U.S. at 717.

2. Although demonstrating a probability of success on the merits is required in order to obtain a preliminary injunction, that standard has no application to the motion now before the Court. Unless the pending motion is granted, the merits of the petition and the substance of petitioner's underlying civil rights claim will not be considered at all until after she has been delayed for a seventh full academic year.

Accordingly, this Court should expedite consideration of the Petition for a Writ of Mandamus. If the petition is granted, a meaningful hearing on the substantive merits of her civil rights claim can be held in the district court prior to the start of the next medical school class -- at Northwestern University on September 21, 1981, and at the University of Chicago on September 23, 1981.

Respectfully submitted,

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